



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 26, 1961

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. WW-1153

Re: Authority of Highway Commission to direct the Comptroller of Public Accounts to transfer from the State Highway Fund moneys to the Attorney General's Operating Fund and related questions.

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"The State Highway Department has requested a transfer of \$300,000.00 from the State Highway fund to the Attorney General's operating fund. This request is made under authority of a rider in Senate Bill I, Acts of the First Called Session, 57th Legislature (the Appropriation Bill).

"The rider found in the above bill is as follows:

"The State Highway Commission is authorized to direct the State Comptroller to transfer funds as it may consider necessary from the State Highway Fund to the Attorney General's Operating fund as reimbursement of the Attorney General's Operating fund for salaries and expenses of the staff of the Attorney General in the handling of the legal work of the State Highway Department for the purpose of acquiring State Highway right of way."

"Article 6694, V.C.S., provides as follows:

"All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund", and shall be paid only on

warrants issued by the Comptroller upon vouchers drawn by the chairman of the commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures.'

"Assuming that the funds in question are to be expended for the building and maintaining of a system of highways, the problem facing me is, the correct procedure to be followed in making the money available for your use.

"Please advise:

"(1). Would the making of a lump sum transfer to your operating appropriation violate the requirements of Article 6694 V.C.S. which plainly states that withdrawals from the State Highway Fund shall be by the issuance of a warrant to be issued upon the presentation, to me, of an itemized account approved by the State Highway Commission?

"(2). If you hold that the rider does not contravene a General Statute and that lump sum transfers may be made from the Highway Fund, must the transfer of the \$300,000.00 be on a reimbursable basis?

"(3). If you find that the Highway Funds may be used by you on a reimbursable basis, would the same rule of law apply to the appropriations in the amount of \$15,432.00 to the Executive Department and the appropriations of \$10,000.00 to your department. These appropriations are found in S.B. I, Acts of the First Called Session, 57th Legislature."

The Legislature has the authority to create operating funds as an efficient method of carrying out the purposes for which special funds are created. Attorney General's Opinions WW-554 (1959), WW-557 (1959), WW-573 (1959), and WW-1122 (1961).

Whenever the State Highway Commission directs the State Comptroller to transfer funds it may consider necessary from the State Highway Fund to the Attorney General's Operating Fund as reimbursement of the Attorney General's Operating Fund for salaries and expenses of the staff of the Attorney General

in handling the legal work of the State Highway Department for the purpose of acquiring State Highway rights-of-way, it has complied with the provisions of Article 6694, Vernon's Civil Statutes, quoted in your request and has used an efficient method of carrying out the purposes for which the State Highway Fund was created. You are therefore advised in answer to your first question that a lump sum transfer to the Attorney General's Operating Fund does not violate Article 6694, Vernon's Civil Statutes.

In answer to your second question, the wording of the rider quoted in your request appearing on Page III-96 of the General Appropriations Act states that the Highway Commission is authorized to direct the State Comptroller to transfer funds as it may consider necessary. Therefore, it is entirely within the discretion of the State Highway Commission to determine whether the transfer be made in a lump sum or otherwise. In other words, the transfer to be made from the Highway Fund is not required to be made on a reimbursable basis.

In addition to the rider quoted in your request, the Legislature has made specific transfers from the Highway Fund in the amount of \$10,000 to the Attorney General's Operating Fund (Page III-17) and in the amount of \$15,432 to the Governor's Office (Page III-72). These sums are specific transfers that should be made in one lump sum. The transfer of \$300,000.00 to the Operating Fund of the Attorney General's Office is expended for the purpose of paying salaries and expenses of the Attorney General in the handling of the legal work of the State Highway Department for the purpose of acquiring rights-of-way. Such expenditure may be reimbursed by the Federal Government in the Interstate Highway Program. Therefore, in order that proper audits may be made for the purpose of obtaining Federal reimbursement, the \$300,000.00 transfer should be placed in the Operating Fund of the Attorney General's Department by the Comptroller and kept separate and apart from other funds in such Attorney General's Operating Fund.

S U M M A R Y

The Legislature is authorized to provide in the General Appropriations Act for the creation of operating funds and may direct the Comptroller of Public Accounts to transfer to various operating funds State Highway Funds as an efficient method of carrying out the purposes for which the

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Highway Fund was created. Attorney General's Opinions WW-554 (1959), WW-557 (1959), WW-573 (1959), and WW-1112 (1961). The transfer of moneys pursuant to a rider that the Highway Commission is authorized to direct the State Comptroller to transfer funds to the Attorney General's Operating Fund for salaries and expenses of the Attorney General's staff in handling of the legal work in acquiring rights-of-way should be transferred to the Attorney General's Operating Fund and kept in the Attorney General's Operating Fund, separate and apart from other funds in such Operating Fund, for the purpose of proper auditing in order to acquire Federal participation in such expenditure.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Henry G. Braswell
Marvin Thomas
Riley Eugene Fletcher
J. C. Davis

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.